

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: American Natural Soy, Inc.& Cherokee Investments, L.L.C. Cherokee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW- 28 NO. 2012-AQ- 29 NO. 2012-SW- 24
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TO: Mark Schuett, President
American Natural Soy, Inc.
1510 South 2nd Street
Cherokee, IA 51012

Nicole Jennett, Registered Agent
Cherokee Investments, L.L.C.
1510 S 2nd Street
Cherokee, IA 51012

I. SUMMARY

This administrative consent order (order) is entered into between American Natural Soy, Inc., Cherokee Investments, L.L.C. (collectively referred to as Natural Soy), and the Iowa Department of Natural Resources (Department). Natural Soy hereby agrees to properly dispose of all wastewater, to obtain a National Pollution Discharge Elimination System (NPDES) General Permit # 1, properly dispose of all solid waste and pay a penalty in the amount of \$7,000.00. Natural Soy neither admits nor denies the following provisions and both parties enter into this agreement in the interest of avoiding litigation.

In the interest of avoiding litigation, the parties have entered into this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist

IDNR Field Office #3
1900 N. Grand Gateway North, Suite E17
Spencer, IA 51301
712/262-4177

Relating to legal requirements:

Carrie Schoenebaum,
Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building

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Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, (wastewater) and the rules promulgated or permits issued pursuant that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

Natural Soy neither admits nor denies the following statement of facts:

1. Cherokee Investments, L.L.C. is the deed holder to property located in Section 3, T91N R40W, Cherokee County Iowa. This property is locally known as 1510 South 2nd Street, Cherokee Iowa. American Natural Soy, Inc. operates an organic oilseed processing plant at this site. Wastewater from Natural Soy flows into a 1,500 gallon septic tank (located onsite) which acts as a grease trap prior to discharge to the City of Cherokee's (the City) sewer.
2. On April 18, 2012, Steve Casey, the City's Wastewater Operator, called the Department to report that the City's treatment plant had experienced an upset due to incoming oil and grease. He reported that at approximately 7:45 am on that day he noticed that the wastewater in the influent waste stream, aeration basins and final clarifiers, was whitish/yellow in color. Shortly after, Mr. Casey discovered that the material was passing through the treatment plant and being discharged to the Little Sioux River. At 8:00 am the City rerouted all effluent flow to the treatment plant's lagoons and the discharge to the river ceased.
3. Next, Mr. Casey and City staff proceeded to check lift stations in the collection system to determine the source of the material. The Beech Street Lift Station, which is the City's main lift station, was coated with grease, wastewater and heavy foam. The City observed the direction from which the material was coming from and proceeded to

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the next upstream lift station—the United Lift Station. This lift station is located on the south end of the City and was the final lift station the operators checked. This lift station services a very small area with only two industries; Natural Soy and Cloverleaf Cold Storage. The United Lift Station was also coated with yellow grease. Because Cloverleaf Cold Storage does not handle oils Mr. Casey determined that the release must have originated at Natural Soy.

4. Next, Mr. Casey contacted Sam Jennett, Plant Engineer with Natural Soy, to inform him of the oil and grease issue in its collection system and treatment plant and that the City had determined the issue had been caused by Natural Soy. Mr. Jennett informed Mr. Casey that a night shift operator at Natural Soy had dumped approximately 1,500 gallons of soybean gums into the facility floor drain, then flushed it down with water. This floor drain discharges to the City's collection system.

5. Later that day, at approximately 11:45 am Tom Roos, Environmental Specialist with the Department, arrived at the City's wastewater treatment facility. Upon arrival Mr. Roos walked through the treatment plant to assess the current conditions of the facility. He observed the influent flow had returned to normal color, but the aeration basins and final clarifiers contained a significant amount of floating yellow grease. Prior to the outfall line the effluent structure contained a ring of yellow grease showing where the water level had been prior to diverting the discharge to the river.

6. Next, Mr. Casey and Mr. Roos proceeded to the facility's outfall where they observed grease along the bank and floating in the river.

7. Mr. Casey and Mr. Roos then proceeded to the United Lift Station. Mr. Roos observed that the lift station's wet well walls and pumps were coated with thick yellow grease. At that time, a contractor arrived with a vacuum-truck to clean the grease from the lift station.

8. Next Mr. Casey and Mr. Roos went to Natural Soy where they met with Mr. Jennett. Mr. Jennett explained that Natural Soy produces organic oils, flour, and meal from soybeans, canola, sunflower, safflower, and flax seeds. He further explained that on April 17, 2012, at approximately 6:00 pm, an employee drained 1,500 gallons of soybean gums to a floor drain that leads to the City's sanitary sewer. Due to the consistency of the material additional water was used to flush it down the drain. He also informed Mr. Roos that typical disposal of soybean gums is done by mixing the material with bentonite clay and storing it in an open front shed, which is referred to as the "clay pit." Once the clay pit is full, final disposal is done by land application on agricultural ground twice each year. Since it was very wet and sloppy around the clay pit the employee made the decision to dump the soybean gums down the drain. Mr. Jennett explained that typically wastewater from the Natural Soy facility flows into a 1,500 gallon septic tank which acts as a grease trap prior to discharge to the City sewer. After discovery of the incident, on

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the morning of April 18, 2012, Natural Soy had a contractor remove the oil and grease from the septic tank.

9. Next, Mr. Jennett gave Mr. Casey and Mr. Roos a tour of the facility. Outside the facility they were shown the clay pit where the soybean gum/bentonite mixture is stored. Much of the mixture was not under roof and flowing out of the building. In addition, there was a significant amount of leachate from the piles that had accumulated in front of the building. This leachate was exposed to storm water and has the potential to run off the property during a rain event. Storm water in this area runs behind the main facility, under a set of railroad tracks, and crosses under Washborn Street where it leaves the property. There was a significant amount of tracking of the soybean gum/bentonite mixture from the facility load out to the clay pit. This material could flow off the property during a significant rain event and discharge to a water of the State.

10. While on site Mr. Roos also observed a burn barrel with ashes, it was apparent the facility had burned waste materials.

11. Mr. Roos asked Mr. Jennett to provide a copy of the facility's Spill Prevention Control and Countermeasures Plan (SPCC). Mr. Jennett was unable to provide a copy at that time and he told Mr. Roos he would forward it to him as soon as it was located. Mr. Jennett was also asked to provide the SIC code that Natural Soy is operating under to determine whether a NPDES Storm Water Permit was needed at this facility. He indicated he would also provide that information when he determined the appropriate code.

12. On April 25, 2012, Mr. Jennet provided the Department with the facility's SIC code (2079) and NAICS code (311224). SIC code 2079 (industrial materials) covers industries engaged in the manufacturing of shortening, table, oils, margarine and other edible fats and oils. Mr. Jennet was informed by Mr. Roos that due to the SIC code and operations at the facility, Natural Soy was required to obtain a NPDES Storm Water General Permit No. 1 for industrial activities.

13. On May 31, 2012, the Department sent Natural Soy a Notice of Violation which included a Report of Investigation. This letter also informed Natural Soy that the matter was being referred to the Department's Legal Services Bureau for enforcement.

CONCLUSIONS OF LAW

Natural Soy neither admits nor denies the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Because no such permit has been issued for

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the discharge referenced herein, the foregoing facts establish that this provision has been violated.

2. 567 IAC 61.3(2) “b”, “c” and “e” state that

[s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. Such waters shall be free from materials attributable to wastewater discharges ... producing objectionable color, odor or other aesthetically objectionable conditions.

...

Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

The above stated facts demonstrate that Natural Soy violated these legal requirements.

3. 567 IAC 62.1(7) states that

[w]astes in such volumes or quantities as to exceed the design capacity of the treatment works, cause interference or pass through, or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of a publicly owned treatment works or a semipublic sewage disposal system and are prohibited.

The above stated facts show noncompliance with this provision.

4. 567 IAC 64.3(1) states that “no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director.” This rule was violated when soybean gum laden wastewater was disposed of via a floor drain which discharges to the City’s wastewater treatment plant and ultimately the Little Sioux River.

5. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

6. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Natural Soy allowed the burning of various solid wastes. The above stated facts demonstrate noncompliance with this provision.

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7. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

8. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The solid waste which was burned was improperly disposed of therefore the above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the Department orders and Natural Soy agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Natural Soy shall obtain an NPDES General Permit No. 1 from the Department within sixty (60) days after the Director signs this order;
2. In the future Natural Soy shall properly dispose of all solid waste;
3. In the future Natural Soy shall properly dispose of all wastewater generated at its facility; and
4. Natural Soy shall pay a penalty in the amount of \$7,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the wastewater violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

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2. **Economic Benefit:** Natural Soy has saved time and money by failing to properly dispose of the soybean gum laden wastewater. It is estimated that Natural Soy would have spent \$1,000.00 to properly dispose of this wastewater. Therefore, that amount is assessed for this factor.

3. **Gravity of the Violation:** The discharge of soybean gums caused severe problems in the City of Cherokee's collection system and treatment facility. The loading on the treatment plant caused the material to pass through the plant and discharge to the Little Sioux River. This discharge also caused the City's treatment plant to divert its effluent flow from the river to its facultative lagoons for ten days. The discharge of this waste to a water of the State degrades water quality, harms aquatic life and prevents the attainment of state water quality goals.

Further, open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. For the reasons discussed above \$2,000.00 is assessed for the wastewater violations and \$1,000.00 is assessed for the open burning and solid waste violations. A total of \$3,000.00 is assessed for this factor.

4. **Culpability:** An employee of Natural Soy purposefully discharged the soybean gum laden wastewater to the City's collection system. Natural Soy is responsible for the actions of its employees and must conduct training on proper management of its waste material. Also, Natural Soy has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that its conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. For the reasons discussed above \$2,000.00 is assessed for the wastewater violations and \$1,000.00 is assessed for the open burning and solid waste violations. A total of \$3,000.00 is assessed for this factor.

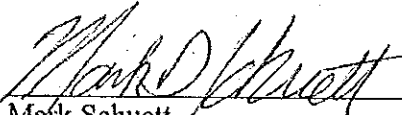
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138, 455B.175, 455B.308 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Natural Soy. By signature to this order, all rights to appeal this order are waived.


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VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.141, 455B.191 and 455B.307.


Mark Schuett
President, American Natural Soy, Inc.

Dated this 6 day of
Nov., 2012.


Cherokee Investments, L.L.C.

Dated this 6 day of
Nov., 2012


Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29th day of
November, 2012.

American Natural Soy Inc, Field Office 3, Carrie Schoenebaum; Tom Roos, I.C.1., &
I.C.6.a.